No. 46363-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**John Chacon,**

Appellant.

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Lewis County Superior Court Cause No. 14-1-00151-1

The Honorable Judge James Lawler

# Appellant's Opening Brief

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## ISSUES AND ASSIGNMENTS OF ERROR

1. Mr. Chacon's convictions on counts one and two violated his Sixth and Fourteenth Amendment right to an adequate charging document.

2. Mr. Chacon's convictions on counts one and two violated his state constitutional right to an adequate charging document under Wash. Const. art. I, §§ 3 and 22.

3. The charging document failed to allege critical facts allowing Mr. Chacon to plead a former conviction in any subsequent prosecution for a similar offense.

   **ISSUE 1:** In addition to specifying the essential elements of an offense, a charging document must set forth any critical facts necessary to identify the particular crime charged. Here, the Information included only the essential legal elements of malicious harassment and assault, without any particulars specific to this case. Did the omission of critical facts infringe Mr. Chacon's right to an adequate charging document under the Sixth and Fourteenth Amendments and Wash. Const. art. I, §§ 3 and 22?

4. The trial court erred by giving a nonstandard preliminary instruction which distorted the presumption of innocence, the burden of proof, and the reasonable doubt standard.

5. The trial court erred by telling jurors "By definition there are at least two sides to every case."

   **ISSUE 2:** Due process requires a trial court to properly instruct jurors on the presumption of innocence, the burden of proof, and the reasonable doubt standard. Here, the trial court instructed jurors that "there are at least two sides to every case." Did the trial court's nonstandard preliminary instruction infringe Mr. Chacon's Fourteenth Amendment right to due process?

6. The order imposing $1800 in attorney fees violated Mr. Chacon's Sixth and Fourteenth Amendment right to counsel.

7. The trial court erred by imposing attorney fees in the absence of any evidence showing that Mr. Chacon had the present or likely future ability to pay.

8. The court erred by adopting Finding of Fact No. 2.5 in the Judgment and Sentence.

> **ISSUE 3:** A trial court may only order an offender to pay attorney fees upon finding that s/he has the present or likely future ability to pay. Here, the court imposed $1800 in costs for court-appointed counsel without any evidence that Mr. Chacon had the ability to pay them. Did the trial court violate Mr. Chacon's Sixth and Fourteenth Amendment right to counsel?

## STATEMENT OF FACTS AND PRIOR PROCEEDINGS

John Chacon is a decorated Iraq combat veteran who left active duty in 2006. RP[1] 92-93, 259. On March 7, 2014, he went into a bike shop in Centralia and saw a disturbing copy of a photo on the bulletin board. It depicted a lynched black man, still hanging in a tree. RP 75-76, 105. He pulled it off the board. RP 90, 105, 108, 116.

Mr. Chacon went into the nearby Santa Lucia coffee shop. RP 94. He'd been there before, multiple times. RP 29, 150. He had been friends with the owner's brother. RP 149.

Mr. Chacon stood in line, and then ordered a glass of milk and a biscotti. RP 66. He paid for his items and took them toward the seating area. RP 97. His interaction with barista Tessa Alberts was cordial. RP 66, 96. They knew each other, as they had traveled in the same social circles for years. RP 53-5, 65, 95.

Owner Justin Page then approached Mr. Chacon and told him he needed to leave. RP 22-23, 33, 66. Mr. Chacon wasn't happy about this. RP 70, 99. Part of what upset him was his perception that Page was "kicking [him] out because of [his] homeless appearance." RP 109. He complained that he had rights, and asked if he could get his milk put into a

to-go cup. Page assented, and took the milk and put it into a paper cup. RP 34, 103. He gave the cup to Mr. Chacon, who'd been waiting for it. RP 44-47.

Mr. Chacon then threw the paper he'd taken from the bike shop, of the lynched man, at the barista and stormed out of the café. RP 52, 66, 104, 108. As he tossed the paper, he said something but neither Alberts nor Page could make it out. RP 34-35, 69.

When she opened the paper and saw what it contained, Alberts[2] was distraught. RP 38-39, 74, 79. Page called the police who came and took reports. RP 41, 81.

The state charged Mr. Chacon with malicious harassment, assault 4, and burglary 2. CP 2-3.

At trial, the judge's preliminary instructions included the following: "Don't jump to conclusions. By definition there are at least two sides to every case. Listen carefully to all the evidence before starting to draw your conclusions." RP 11. There was no objection to this instruction. RP 11.

Page testified that at some point a year or more prior, he had instructed Mr. Chacon not to come back to the coffee shop. RP 30-31, Mr.

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[1] The only date of the Verbatim Report of Proceedings that is not sequentially numbered is May 1, 2014. Since that date is not cited in this brief, the entire transcript cites will be to RP.

Chacon testified that while he had been asked to leave the café in the past, he was always allowed back in on a later occasion. RP 111, 126. A state rebuttal witness supported this testimony, telling the jury that she overheard owner Page telling Mr. Chacon that he was welcome to get coffee but not to make the café a home base. RP 156-160.

The jury convicted Mr. Chacon as charged. RP 248-250. The court imposed $1800 in attorney fees. CP 45. Mr. Chacon timely appealed. CP 51.

## ARGUMENT

### I. THE INFORMATION WAS CONSTITUTIONALLY DEFICIENT BECAUSE IT FAILED TO INCLUDE CRITICAL FACTS.

A. Standard of Review.

Challenges to the sufficiency of a charging document are reviewed *de novo*. *State v. Rivas*, 168 Wn. App. 882, 887, 278 P.3d 686 (2012) *review denied,* 176 Wn.2d 1007, 297 P.3d 68 (2013). Such challenges may be raised for the first time on appeal. *Id.*

Where the Information is challenged after verdict, the reviewing court construes the document liberally. *Rivas*, 168 Wn. App. at 887. The test is whether or not the necessary facts appear or can be found by fair

[2] Alberts identifies herself as black. RP 73.

construction in the charging document. *Id.* If the Information is deficient, prejudice is presumed. *Id.,* at 888. The remedy for an insufficient charging document is reversal and dismissal without prejudice. *Id.,* at 893.

B. The document charging Mr. Chacon with malicious harassment and fourth-degree assault fails to allege the critical facts necessary to prepare a defense or to plead to an acquittal or conviction as a bar against a second prosecution for the same crimes.

The Sixth Amendment right "to be informed of the nature and cause of the accusation" and the federal guarantee of due process impose certain requirements on charging documents. U.S. Const. Amends. VI, XIV.[3] A charging document "is only sufficient if it (1) contains the elements of the charged offense, (2) gives the defendant adequate notice of the charges, and (3) protects the defendant against double jeopardy." *Valentine v. Konteh*, 395 F.3d 626, 631 (6th Cir. 2005).

An Information is deficient unless it "contains the elements of the offense intended to be charged…, sufficiently apprises the defendant of what he must be prepared to meet, and…shows with accuracy to what extent he may plead a former acquittal or conviction" to defeat a later charge if "proceedings are taken against him for a similar offense." *Russell v. United States*, 369 U.S. 749, 763-64, 82 S.Ct. 1038, 8 L.Ed.2d 240

[3] Wash. Const. art. I, §§ 3 and 22 impose similar requirements.

(1962) (citations and internal quotation marks omitted). Any offense charged in the language of the statute "must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged." *Id.* (citations and internal quotation marks omitted).

Any "critical facts must be found within the four corners of the charging document." *City of Seattle v. Termain*, 124 Wn. App. 798, 803, 103 P.3d 209 (2004). Thus, for example, a charging document for violation of a domestic violence protection order must specifically identify the order allegedly violated. *Id.*

Similarly, in cases involving stolen property, the Information must "clearly" charge the accused person with a crime relating to "specifically described property." *State v. Greathouse*, 113 Wn. App. 889, 903, 56 P.3d 569 (2002). When the charging document includes "not a single word to indicate the nature, character, or value of the property," the charge is "too vague and indefinite upon which to deprive one of his [or her] liberty." *Edwards v. United States*, 266 F. 848, 851 (4th Cir. 1920).

A conviction for simple assault requires proof of an intentional touching that is harmful or offensive. RCW 9A.36.041; *see also* CP 21-22. Malicious harassment requires proof that the accused (a) acted "because of his or her perception of the victim's race [or] color," and (b)

threatened "a specific person or group of persons..." RCW 9A.36.080. In this case, the Information does not pass the test outlined in *Russell.* *Russell,* 369 U.S. 749.[4]

The Information includes no critical facts as to counts one and two. On the malicious harassment charge, the Information does not name the victim whose race or color was the subject of Mr. Chacon's perception. CP 2. Nor does it name the "specific person" or identify the "group of persons" that he allegedly threatened. CP 2. On the assault charge, it does not identify "another person" whom Mr. Chacon allegedly assaulted. CP 3.

Even when liberally construed, the Information does not adequately charge Mr. Chacon with malicious harassment and assault. The allegations are "too vague and indefinite upon which to deprive [Mr. Chacon] of his liberty." *Id.* The Information provides neither notice nor protection against double jeopardy. *Russell*, 369 U.S. at 763-64; *Valentine,* 395 F.3d at 631. If Mr. Chacon were again prosecuted for malicious harassment of Ms. and simple assault of Ms. Alberts, he could not plead the Information as a bar to the new charges.

[4] The charging document uses the language of the statute, and thus "contains the elements of the offense intended to be charged." *Russell*, 369 U.S. at 763-64.

Because of this, the Information is constitutionally deficient. Mr. Chacon's convictions on counts one and two must be reversed, and the charges dismissed without prejudice. *Rivas*, 168 Wn. App. at 893.

## II. THE TRIAL COURT'S NONSTANDARD PRELIMINARY INSTRUCTION DISTORTED THE PRESUMPTION OF INNOCENCE, THE BURDEN OF PROOF AND THE REASONABLE DOUBT STANDARD.

### A. Standard of Review

Constitutional errors are reviewed *de novo*. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 66, 331 P.3d 1147 (2014). A manifest error affecting a constitutional right may be reviewed for the first time on appeal. RAP 2.5(a)(3).

### B. The trial judge infringed Mr. Chacon's due process right to a fair trial by telling jurors to expect "at least two sides" to the case.

Due process requires the state to prove each element of a charged offense beyond a reasonable doubt. U.S. Const. Amend. XIV; Wash. Const. art. I, § 3; *Sullivan v. Louisiana*, 508 U.S. 275, 113 S.Ct. 2078, 2082, 124 L.Ed.2d 182 (1993); *State v. Hundley*, 126 Wn.2d 418, 421, 895 P.2d 403 (1995). Jury instructions must clearly communicate this burden to the jury. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). (citing *Victor v. Nebraska*, 511 U.S. 1, 5-6, 114 S.Ct. 1239, 127 L.Ed.2d 583 (1994)). Instructions that relieve the state of its burden violate due

process and the Sixth Amendment right to trial by jury. U.S. Const. Amends.VI; XIV; *Sullivan*, 508 U.S. at 278-81; *Bennett*, 161 Wn.2d at 307.

The trial court's advance oral instruction included the following language: "By definition there are at least two sides to every case." RP 11. This language differed from that in the pattern instruction (WPIC 1.01), and from that approved by the Supreme Court in *Bennett. Bennett*, 161 Wn.2d at 317-318.

The deviation was more than merely semantic. Instead, the instruction notified jurors they could expect to hear "at least two sides" to the case. RP 11. The clear implication was that the defendant had a "side." This set the jury up to expect something from the defense, whether through cross-examination of the state's witnesses or through presentation of testimony from defense witnesses.

The error subtly shifted the burden of proof. The problem was aggravated by the court's directive to avoid jumping to conclusions. RP 11. This suggested to jurors that they should wait until they had heard both "sides." Jurors may also have understood the court's nonstandard phrase to mean the defense had a story to reveal, either through cross-examination or defense testimony. This is incorrect; an accused person

may be acquitted even in the absence of a coherent story: if the state fails to meet its burden of proof, the jury must vote not guilty.

The error was especially egregious because it came at the very beginning of the case. Since the problematic instruction preceded the testimony, it served as a lens through which jurors viewed each piece of evidence as it was admitted. If the prosecution's evidence raised questions as it was admitted, jurors may have expected Mr. Chacon to answer those questions, either through cross-examination or through the testimony of witnesses.

As a matter of law, the jury is "firmly presumed" to have followed the court's erroneous instruction. *Diaz v. State*, 175 Wn.2d 457, 474-475, 285 P.3d 873 (2012). Jurors must have had the erroneous instruction in mind while listening to the evidence. *Id.* They had no reason to disregard it when it came time to deliberate. Having received the evidence through the distorting lens of the preliminary instruction, they had no choice but to base deliberations on their skewed understanding.

The erroneous instruction "subtly shift[ed] the burden." *State v. Emery*, 174 Wn.2d 741, 759-760, 278 P.3d 653 (2012). It also "create[d] a lower standard of proof than due process requires..." *Humphrey v. Cain*, 120 F.3d 526, 534 (5th Cir. 1997) *on reh'g en banc,* 138 F.3d 552 (5th Cir. 1998). By relieving the state of its constitutional burden of proof,

the court's instruction violated Mr. Chacon's right to due process and his right to a jury trial. *Id.; Sullivan*, 508 U.S. at 278-81; *Bennett*, 161 Wn.2d at 307. Accordingly, his conviction must be reversed and the case remanded for a new trial with proper instructions. *Sullivan*, 508 U.S. at 278-82.

C. The court's misstatement created structural error requiring automatic reversal.

The reasonable doubt standard "plays a vital role in the American scheme of criminal procedure." *In re Winship*, 397 U.S. 358, 363, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). It "provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.'" *Id.,* (citing *Coffin v. United States*, 156 U.S. 432, 453, 15 S.Ct. 394, 39 L.Ed. 481 (1895)).

A faulty instruction on reasonable doubt "unquestionably qualifies as 'structural error.'" *Sullivan,* 508 U.S. at 282. The consequences of such errors "are necessarily unquantifiable and indeterminate." *Id.* Because of this, structural errors require automatic reversal. *In re Stockwell*, 179 Wn.2d 588, 608, 316 P.3d 1007 (2014).

Here, the court committed structural error by telling jurors that there are at least two sides to every story. The court's instructions

diverted jurors from reasonable doubt, and focused them instead on whether or not they could give a reason for any doubt.

Our system of justice relies on juries to decide the facts in criminal trials. *Alleyne v. United States*, -- U.S. ---, ___, 133 S.Ct. 2151, 2156, 186 L.Ed.2d 314 (2013). A trial judge "may not direct a verdict for the State, no matter how overwhelming the evidence." *Sullivan,* 508 U.S. at 277. Nor may a court review any matter that inheres in the jury's verdict. *State v. Linton*, 156 Wn.2d 777, 788, 132 P.3d 127 (2006).

This faith in the jury rests on the assumption that juries will receive proper instruction, especially with respect to the "bedrock" principles underlying the entire system. *Winship*, 397 U.S. at 363. Instructions that misstate the reasonable doubt standard remove the premise upon which the jury system is based. No one can have faith in a verdict delivered by a jury that received misleading instructions on reasonable doubt.

The error here "unquestionably qualifies as 'structural error.'" *Sullivan,* 508 U.S. at 282. Because of this, the court must reverse Mr. Chacon's conviction. *Id.*; *Stockwell,* 179 Wn.2d at 608.

## III. THE COURT VIOLATED MR. CHACON'S SIXTH AMENDMENT RIGHT TO COUNSEL BY IMPOSING ATTORNEY'S FEES IN A MANNER THAT IMPERMISSIBLY CHILLS THE EXERCISE OF THAT RIGHT.

A. Standard of Review.

Constitutional errors are reviewed *de novo. LK Operating,* 181 Wn.2d at 66.

B. The court violated Mr. Hansen's right to counsel by ordering him to pay attorney fees without inquiring into his present or future ability to pay.

The Sixth Amendment guarantees an accused person the right to counsel. U.S. Const. Amends. VI; XIV. A court may not impose costs in a manner that impermissibly chills exercise of the right to counsel. *Fuller v. Oregon*, 417 U.S. 40, 45, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974). Under *Fuller,* the court must assess the accused person's current or future ability to pay prior to imposing costs. *Id.*

In Washington, the *Fuller* rule has been implemented by statute. RCW 10.01.160 limits a court's authority to order an offender to pay the costs of prosecution:

> The court *shall not order* a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3) (emphasis added).

Nonetheless, Washington cases have not required a judicial determination of the defendant's actual ability to pay before ordering payment for the cost of court-appointed counsel. *State v. Blank*, 131 Wn.2d 230, 239, 930 P.2d 1213 (1997) (discussing *State v. Curry*, 118 Wn.2d 911, 916, 829 P.2d 166 (1992)); *see also, e.g., State v. Smits*, 152 Wn. App. 514, 523-524, 216 P.3d 1097 (2009); *State v. Crook*, 146 Wn. App. 24, 27, 189 P.3d 811 (2008). This construction of RCW 10.01.160(3) violates the right to counsel.[5] *Fuller*, 417 U.S. at 45.

In *Fuller*, the U.S. Supreme Court upheld an Oregon statute that allowed for the recoupment of the cost a public defender. *Id.* The court relied heavily on the statute's provision that "a court may not order a convicted person to pay these expenses unless he 'is or will be able to pay them.'" *Id.* The court noted that, under the Oregon scheme, "no requirement to repay may be imposed if it appears *at the time of sentencing* that 'there is no likelihood that a defendant's indigency will end.'" *Id.* (emphasis added). Accordingly, the court found that "the [Oregon] recoupment statute is quite clearly directed only at those convicted defendants who are indigent at the time of the criminal proceedings against them but who subsequently gain the ability to pay the

[5] In addition, the problem raises equal protection concerns. Retained counsel must apprise a client in advance of fees and costs relating to the representation. RPC 1.5(b). No such obligation requires disclosure before counsel is appointed.

expenses of legal representation.... [T]he obligation to repay the State accrues only to those who later acquire the means to do so without hardship." *Id.*

Oregon's recoupment statute did not impermissibly chill the exercise of the right to counsel because "[t]hose who remain indigent or for whom repayment would work 'manifest hardship' are forever exempt from any obligation to repay". *Fuller*, 417 U.S. at 53. The Oregon scheme also provided a mechanism allowing an offender to later petition the court for remission of the payment if s/he became unable to pay. *Fuller*, 417 U.S. at 45.

Several other jurisdictions have interpreted *Fuller* to require a finding of ability to pay before ordering an offender to reimburse for the cost of counsel. *See e.g. State v. Dudley*, 766 N.W.2d 606, 615 (Iowa 2009) ("A cost judgment may not be constitutionally imposed on a defendant unless a determination is first made that the defendant is or will be reasonably able to pay the judgment"); *State v. Tennin*, 674 N.W.2d 403, 410-11 (Minn. 2004) ("The Oregon statute essentially had the equivalent of two waiver provisions—one which could be effected at imposition and another which could be effected at implementation. In contrast, the Minnesota co-payment statute has no similar protections for the indigent or for those for whom such a co-payment would impose a

manifest hardship. Accordingly, we hold that Minn. Stat. § 611.17, subd. 1 (c), as amended, violates the right to counsel under the United States and Minnesota Constitutions"); *State v. Morgan*, 173 Vt. 533, 535, 789 A.2d 928 (2001) ("In view of *Fuller,* we hold that, under the Sixth Amendment to the United States Constitution, before imposing an obligation to reimburse the state, the court must make a finding that the defendant is or will be able to pay the reimbursement amount ordered within the sixty days provided by statute").

Washington courts have erroneously interpreted *Fuller* to permit a court to order recoupment of court-appointed attorney's fees in all cases, as long as the accused may later petition the court for remission if s/he cannot pay. *See e.g. Blank*, 131 Wn.2d at 239-242. This scheme turns *Fuller* on its head and impermissibly chills the exercise of the right to counsel. *Fuller*, 417 U.S. at 53.

Here, neither party provided the court with information about Mr. Chacon's present or likely future ability to pay attorney's fees. *See* CP *generally,* RP *generally.* The Judgment and Sentence does not even include a boilerplate finding regarding his ability to pay. CP 39-50.

However, the court did find Mr. Chacon indigent at the beginning and end of the proceedings. CP 1, 52. This suggests he was unable to pay

at the time he was sentenced. His felony convictions and incarceration will negatively impact his prospects for future employment.

The lower court ordered Mr. Chacon to pay $1800 in attorney fees without conducting any inquiry into his present or future ability to pay. This violated his right to counsel. Under *Fuller,* the court lacked authority to order payment for the cost of court-appointed counsel without first determining whether he had the ability to do so. *Fuller*, 417 U.S. at 53. The order requiring Mr. Chacon to pay $1800 in attorney fees must be vacated. *Id*

C. Erroneously-imposed legal financial obligations may be challenged for the first time on appeal.

Although most issues may not be raised absent objection in the trial court, illegal or erroneous sentences may be challenged for the first time on appeal. *State v. Ford,* 137 Wn.2d 427, 477-78, 973 P.2d 452 (1999) *see also, State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (erroneous condition of community custody could be challenged for the first time on appeal). An offender may thus challenge imposition of a criminal penalty for the first time on appeal. *State v. Moen*, 129 Wn.2d 535, 543-48, 919 P.2d 69 (1996).[6] Furthermore, any argument may be

[6] *See also, State v. Parker*, 132 Wn.2d 182, 189, 937 P.2d 575 (1997) (explaining improperly calculated standard range is legal error subject to review); *In re Personal Restraint of Fleming*, 129 Wn.2d 529, 532, 919 P.2d 66 (1996) (explaining "sentencing error

raised for the first time on appeal if it involves a manifest error affecting a constitutional right. RAP 2.5(a).

All three divisions of the Court of Appeals have held that LFOs cannot be challenged for the first time on appeal. *State v. Duncan*, 180 Wn. App. 245, 327 P.3d 699 (2014); *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2013) *review granted,* 178 Wn.2d 1010, 311 P.3d 27 (2013); *State v. Calvin*, --- Wn. App. ---, 316 P.3d 496, 507 (Wash. Ct. App. 2013), *as amended on reconsideration* (Oct. 22, 2013). But the *Duncan*, *Blazina*, and *Calvin* courts dealt only with factual challenges to the court's finding that the accused had the present or future ability to pay LFOs. *Id.*

Those cases do not govern Mr. Chacon's claim that the court lacked constitutional authority to order him to pay. They also conflict with *Ford, Bahl, Moen,* and the other cases cited above. The issue here may be reviewed even though Mr. Chacon did not object in the trial court. *Bahl*, 164 Wn.2d at 744.

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can be addressed for the first time on appeal even if the error is not jurisdictional or constitutional"); *State v. Hunter*, 102 Wn. App. 630, 9 P.3d 872 (2000) (examining for the first time on appeal the validity of drug fund contribution order); *State v. Roche*, 75 Wn. App. 500, 513, 878 P.2d 497 (1994) (holding "challenge to the offender score calculation is a sentencing error that may be raised for the first time on appeal"); *State v. Paine*, 69 Wn. App. 873, 884, 850 P.2d 1369 (1993) (collecting cases and concluding that case law has "established a common law rule that when a sentencing court acts without statutory authority in imposing a sentence, that error can be addressed for the first time on appeal").

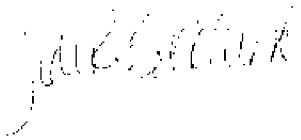
## CONCLUSION

The Information failed to properly charge malicious harassment and assault. Because of this, Mr. Chacon's convictions on counts one and two must be reversed, and the charges dismissed without prejudice. Furthermore, the trial judge gave an erroneous preliminary instruction. This prejudiced Mr. Chacon and requires reversal of all three convictions.

If the convictions are upheld, the order imposing attorney fees must be vacated.

Respectfully submitted on November 20, 2014.

**BACKLUND AND MISTRY**



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# CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Lewis County Prosecuting Attorney
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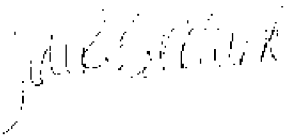
I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on November 20, 2014.



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## November 20, 2014 - 1:51 PM

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